

Claimant contends the preliminary hearing Order should be affirmed. Claimant maintains she established that her work environment caused her symptoms. Claimant, who is a laboratory technician, alleges her symptoms began when she transferred to a laboratory where mold was visible and present in the supply closet, ceiling, rafters, and around windows. She also alleges her symptoms abated when she left that environment, which she argues establishes a relationship between her work environment and symptoms. Finally, claimant contends she provided an expert medical opinion that indicates her condition is related to work. Accordingly, claimant maintains the preponderance of the

evidence establishes that she sustained a work-related injury from working around the mold in respondent's laboratory.

The only issue presented to the Board on this appeal is whether claimant established that her present medical condition or illness is related to her job with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

Claimant began working for respondent as a laboratory technician in approximately October 2007. When claimant started with respondent, she began working in its new plant. But in February 2009 claimant was transferred to respondent's older plant where she worked until February 18, 2010.

After claimant had worked in the older plant for several months, she noticed her voice becoming raspy and cracking. She also began experiencing headaches, muscle aches, feeling dizzy, and having difficulty breathing. Moreover, she began losing weight and developed lesions on her torso. Claimant believes her symptoms began in either July or August 2009. Claimant's symptoms progressively worsened until her personal physician, Dr. Jeffrey Rhoads, took her off work.

Dr. Rhoads initially treated claimant for bacterial infection. But when antibiotics did not help, the doctor asked claimant if she worked around mold. And she did. The laboratory closet contained mold; there was mold on the ceiling and on the rafters; and mold around the windows. Claimant explained,

Then Doctor Rhoads just asked me one day he said, are you around mold at all? And I said, well, yeah I'm – I'm working in mold, it's all over in my lab everywhere, in the closet area where I keep all of my supplies, it's growing on the ceiling, it's on the rafters, it's all over the windows. I mean I – I – I told my supervisor when I came over to that plant that there was mold everywhere, and then in the middle of the summer they had some pipes break and the situation got worse because there was water coming through the ceilings, they were having issues with the heating ducts and it just – it just kept going rampant, and – ¹

Claimant testified that she spent approximately 75 percent of her day in the lab. Her testimony is uncontradicted that swabs from her laboratory were sent to respondent's microbiologist and the results "were coming back with high counts for yeast and mold at over 10,000." Claimant's testimony is likewise uncontradicted that her supervisor, Chris

¹ P.H. Trans. at 11-12.

Dedonder, deleted those test results from respondent's records and that he ignored her requests to clean the mold from the lab.

Dr. Rhoads took claimant off work from November 2 through December 16, 2009. Claimant had been working 12-hour days and the doctor wanted to determine if her condition would improve either by removing her from that environment or by giving her rest. But that respite from work did not improve claimant's symptoms to any substantial degree. Claimant testified that neither her respiratory symptoms nor lesions improved while she was off work. Moreover, she testified that Dr. Rhoads had never told her specifically that her problems were caused by her job.

Claimant worked for respondent until February 18, 2010, as she went to work for Del Monte. She denies having problems with mold either at home or at Del Monte and stated its plant is unbelievably clean. In addition, claimant believes that during the six weeks between her leaving respondent's employment and the preliminary hearing she feels less fatigued and the aching in her joints has improved.

Dr. Rhoads, who saw claimant numerous times in 2009 for her symptoms, wrote in a letter dated February 4, 2010, that the only time claimant's symptoms stabilized was when she was off work in November and December 2009. Accordingly, the doctor felt that suggested a relationship between claimant's symptoms and her job with respondent. The doctor wrote, in part:

The patient's symptoms have progressed since initially becoming symptomatic in October of 2009. This is despite a broad range of treatment plans as previously stated. She continues to have episodic bacterial sinopulmonary infections throughout this period. Her persistent symptoms include: Generalized malaise/fatigue, increased shortness of breath with exertion, low grade fever, weight loss, persistent hoarseness, dry non-productive cough, and for the last four to six weeks, a rash on her trunk and chest wall that continues to progress despite topical and oral medical treatments. This rash resembles a probably fungal dermatitis. The only time her symptoms have abated/stabilized was when she was off work from 11/02/2009 through 12/16/2009.

Logically, this would argue that her illness, at least in part, may be due to her occupational environment. I have been her primary care physician for the past 10 to 11 years and can state without reservation that she has never before had the same or similar illness. . . .²

The ALJ considered the above evidence and concluded that claimant sustained an accidental injury at work and that she was entitled to receive workers compensation benefits. This Board Member agrees. Claimant testified about her health before and after

² *Ibid.*, Cl. Ex. 1.

working in respondent's older plant, the mold in her laboratory, the findings from the microbiologist, and the progression of her symptoms. And Dr. Rhoads letters and notes further indicate there is a direct relationship between claimant's symptoms and her job in respondent's lab. Moreover, there is no evidence at this juncture that suggests otherwise. Accordingly, the undersigned finds claimant has established that her present symptoms are related to her employment with respondent and, therefore, she is entitled to workers compensation benefits.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.³ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2009 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.⁴

WHEREFORE, it is the finding of this Board Member that the Order of Administrative Law Judge Brad E. Avery dated March 29, 2010, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of June 2010.

HONORABLE DAVID A. SHUFELT
BOARD MEMBER

c: Roger D. Fincher, Attorney for Claimant
James W. Fletcher Jr., Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge

³ K.S.A. 44-534a.

⁴ K.S.A. 2009 Supp. 44-555c(k).